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C O N F I D E N T I A L SECTION 01 OF 04 KABUL 000834

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SUBJECT: LOWER HOUSE APPROVES PRESIDENTIAL AMENDMENTS TO
AMNESTY BILL

Classified By: Charge D'Affaires Richard Norland for Reasons 1.4 (b) &

11. (C) SUMMARY: On March 10, the Lower House of Parliament passed the amended amnesty bill that included the President's proposed changes by a vote of 128-3. Speaker Qanooni interrupted the budget discussions in the plenary to announce that he had received the President's amendments to the bill. There was a brief floor debate, and then bill was voted on immediately. Almost half of the parliamentarians were absent. The bill still provides general amnesty for war crimes, but it recognizes an individual's right to bring a case against someone for a specific crime committed. This is consistent with what President Karzai has repeatedly assured us he would do. The bill now must go to the Upper House for approval and then back to the President for final signature. Particularly amidst reports that Hekmatyar may be considering a split with the Taliban, the Amnesty Bill takes on added significance. We regard this as one episode in a continuing serial. END SUMMARY.

Almost Half the MPs Not Present for Vote

12. (SBU) Only 130 of the 249 Lower House parliamentarians were present for the vote. 126 parliamentarians must be present for a quorum. A budget discussion was underway in the plenary when Speaker Yunus Qanooni interrupted the floor debate and announced that he had just received the President's proposed amendments to the draft amnesty bill he received from Parliament. Qanooni read the amended bill, which contains only six articles (vice the twelve in the Parliament's version it submitted to the President), and proposed that the bill be voted on immediately. He himself supported the amended version, commenting that all the proposed amendments were logical and acceptable.

Brief Floor Debate then Vote

13. (SBU) There was a brief floor debate, during which MP Sayyaf (one of the ten who originally proposed the bill and a warlord who stands to benefit from the amnesty) voiced his support for the bill and pushed for an immediate vote. Mohaqqueq (a prominent former warlord and Shia leader) supported Sayyaf's suggestion. MP Rabbani (the former President a mujaheddin leader) did not make any comments, but other MPs from Rabbani's province spoke on his behalf in support of the bill. Kabir Ranjbar (an MP from Kabul who supported the communists) voiced opposition to the bill, stating that the bill was not a "legal document" and the document should be re-drafted to include legal terms legal experts should be consulted in the re-drafting. The three MPs voting against the bill were Daoud Sultanzoy, Ahmad Joenda, and Shukria Barakzai, all representatives from Kabul.

Amendments Recognize Individual Right to Prosecute

14. (SBU) One major change in the amended bill is the recognition of an individual's inherent legal rights to bring a case to trial for a specific crime committed against him. The amendment excludes individual crimes from being amnestied. This addition was made to address Article three of the constitution, which states that no law may contravene Sharia law, and Sharia law states that victims have the right to prosecute those who have committed a crime against them. However, the burden is on the victims to pursue their claims in court and produce evidence for such crimes rather than on the state to try them.

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Bill Still Provides Amnesty for War Crimes to Political
Factions

15. (SBU) The bill still provides general amnesty for "all political sides and rebel factions that were in some way involved in the conflicts before the establishment of the Interim Administration." The amended bill deletes previous mention of the Human Rights Watch Report and the need to review all international laws and conventions to which Afghanistan is a party. It does not make any comment on the role of the media in the national reconciliation process, nor does it lay out a position against mining the border with Pakistan (Parliament's previous version included Articles on all four of these topics).

Amended Bill to Upper House, then President Next

16. (SBU) According to Speaker Qanooni's Chief of Staff Mr. Ghaleb, due to the significant amount of changes in the text, the amended bill will be sent to the Upper House and then back to the President for final signature before it is sent to the Ministry of Justice to be published in the official gazette (at which point it will officially become law). Staff from the State Ministry for Parliamentary Affairs confirm that these are the next steps for the bill to become law.

COMMENT

17. (C) The President is doing his best to placate two very different constituencies with his amendments: the once-powerful and still potent former warlords and mujaheddin leaders who want to ensure their immunity from

prosecution (including Sayyaf and others), and the general population that wants to see those who bombed their cities and killed their families brought to justice (including the human rights community as represented by the Afghan Independent Human Rights Commission, whose chair, Sima Samar, is dismayed by these events and threatening possibly to resign along with some of her Commission members. Afghanistan is party the International Treaty on War Crimes and Crimes Against Humanity, Genocide, and Terrorism (1956, 1983, and 2003 respectively for each of the conventions), and the International Bill of Human Rights (1983). Treaties and laws passed before the current legislature was formed are considered to be in effect until the legislature has a chance to review them. It remains to be seen whether the Parliament can legislate a blanket amnesty which may be in conflict with the international treaties it has signed. In no event was Afghanistan close to beginning trials now. Pressure from inside and outside for "transitional justice will continue. A law passed by one Parliament can be overturned by another. In short, we regard this as one episode in a continuing serial.

18. (C) A potentially interesting backdrop to this debate is formed by news reports that Gulbuddin Hekmatyar, the warlord and HIG leader whose forces continue to fight NATO and Afghan soldiers in the East, may be contemplating a split with the Taliban. While other news reports deny this, the GOA thinks Hekmatyar is under pressure and losing support, which could lead him eventually to sue for peace. The terms under which his forces might stand down remain the subject of speculation, and the GOA is not rushing into anything, but some form of amnesty as outlined in this bill might conceivably be one of the bargaining chips at the GOA's disposal. However, Karzai would have to contend with

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deep public antipathy, particularly in Kabul where HIG rockets rained down destruction for months on end during the civil war, were he to let Hekmatyar off scot-free. Whatever Hekmatyar does, the realization is growing that policies of reconciliation advocated by many to end the fighting may well come into conflict with policies on war crimes. END COMMENT.

Unofficial Translation of Amended Amnesty Bill

19. (SBU) An unofficial version of the President's amended amnesty bill follows below.
"Resolution of National Assembly regarding National Reconciliation and General Amnesty"

Whereas jihad, resistance and the rightful struggles of our people to defend religion and country has been a splendid achievement in the history of our country and are considered as our distinguished national glories, and on the other hand the realization of national reconciliation, ending of war and bloodshed, strengthening of national unity and building trust among all segments of society is crucial at this juncture of time, therefore the following is approved to achieve the above:

Article One:

This resolution has been enacted for the purpose of strengthening the reconciliation and national stability, ensuring the supreme interests of the country, ending hostilities and confidence building among the belligerent parties, and their immunity in the case of obedience to the Constitution and other enforced laws of the country.

Article Two:

To strengthen peace and stability and ending the war, the National Assembly of Afghanistan calls on all armed groups in opposition to Government of Islamic Republic of Afghanistan to join the process of strengthening the

stability and national reconciliation and participate in strengthening the central government and reconstruction of the country.

Article Three:

(1) All hostile and political parties who were in conflict in one way or another prior to the establishment of Interim Administration are included in national reconciliation program and general amnesty for the purpose of reconciliation among different segments of society, strengthening of peace and stability and to begin new life in the contemporary political history of Afghanistan, and enjoy all their legal rights and shall not be prosecuted.

(2) Individuals and groups, who are still in armed opposition against Islamic Republic of Afghanistan who desist from opposition after the enforcement of this resolution, join the process of national reconciliation program, and respect and obey the constitution and other laws of Islamic Republic of Afghanistan shall enjoy the benefits of this resolution.

(3) The provisions set forth in clauses 1 and 2 of this article shall not affect the victims/families' rights under Sharia law to bring criminal claims against persons with respect to individual crimes.

Article Four:

(1) Individuals who are under prosecution due to crimes against internal and external security of the country can not be entitled to the benefits of this resolution.

(2) Individuals who have been sentenced to crimes against internal and external security of the country shall be forgiven or their punishment be mitigated by separate

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decrees, based on the Peace and Reconciliation Commission's recommendation and guarantee, considering the circumstances, and whether the individual's promise not to resume their activities against the Islamic Republic of Afghanistan.

Article Five:

In order to help end the violence and mistrust between the government and opposition armed factions to strengthen stability and national reconciliation, a special commission shall be assigned by the National Assembly to cooperate with National Peace and Reconciliation Commission to pave the ground and facilitate their joining to the National Peace and Reconciliation process.

Article Six:

This resolution is enforced from the date of endorsement and shall be published in official gazette.

NEUMANN